IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 5860 of 2007()

OP(ELE.)5/2005 of MUNSIFF COURT, PALA

PETITIONER:

N.K.AJESH KUMAR, AGED 26 YEARS,
S/O.KUTTAPPAN, NEDUMALAYIL, ELAKKADU KARA,
KADAPLAMATTOM, KOTTAYAM DISTRICT.

BY ADV. SRI.S.PRASANTH

RESPONDENTS:

RAMESHAN GOPALAN S/O.GOPALAN,
MEKKANAMATTATHIL HOUSE, ELAKKADU.

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE I.A.311/2007 IN O.P.(ELE.) NO.5/2005 ON THE FILE OF THE MUNSIFF COURT, PALA.

EXT.P2 TRUE COPY OF ORDER IN I.A.311/2007 IN O.P.(ELE.) 5/2005 OF MUNSIFF COURT, PALA.

TRUE COPY

P.A.TO JUDGE

CSS/

M.N.KRISHNAN, J.

WP(C)No. 5860 OF 2007 V

Dated this the 20th June, 2007.

JUDGMENT

This writ petition is filed challenging the order of the Munsiff, Pala in I.A.311/07 in Election O.P 5/05. The dispute revolves round about the vote cast by one Ouseph, S/o. Devasia, Pazdinjaraymundiyaniyil house. It is the contention that the said person is dead and a vote has been cast in his name. So the question that has to be considered and determined by the court are:- (i) Whether the said Ouseph is dead or alive on the date of casting the vote and (ii) Whether any vote has been cast in the name of Ouseph by anybody and if so by whom and what will be the impact of the same in the election process. I am told that the difference of vote is only one. The trial court found that there is prima facie evidence in the form of Ext.A2 and also the oral evidence of P.W.1 to show that Ouseph is dead. When it is so it is incumbent upon the court to find out whether a vote has been cast by Ouseph and in whose favour. Therefore, that is what is precisely ordered to be done by the court. It cannot found fault with. But, at the same time, the respondents viz., the writ petitioner herein is yet to tender evidence and it is within his realm to prove that the said Ouseph is not dead and the vote has

been cast by him. So only after permitting both sides to adduce evidence as to the factum of the death of Ouseph the court has to arrive at a decision and thereafter to find out whether anybody has done the vote in the name of Ouseph and if so, whether it is valid or invalid. So, at this stage the order passed by the Munsiff does not call for interference. Therefore, the writ petition is dismissed with the observations made above.

Copy of the order may be sent to the concerned Munsiff for further proceedings in the election petition.

M.N.KRISHNAN
Judge

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